

Federal Communications Commission

FCC 99-150

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of

**1998 Biennial Regulatory Review --
Review of Accounts Settlement in
the Maritime Mobile and Maritime
Mobile-Satellite Radio Services and
Withdrawal of the Commission as an
Accounting Authority in the Maritime
Mobile and Maritime Mobile-Satellite
Radio Services**

IB Docket No. 98-96

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: June 21, 1999

Released: July 13, 1999

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

Comment Date: August 23, 1999
Reply Comment Date: September 8, 1999

I. INTRODUCTION

1. As part of our 1998 biennial regulatory review process, we adopt in this Order our proposal for the Federal Communications Commission (the Commission) to withdraw as a nationwide clearinghouse for settling accounts for maritime mobile, maritime satellite, aircraft and handheld terminal radio services.¹ We find that the public interest would be served better by relying upon private accounting authorities, which are certified under Part 3 of the

¹ See 1998 Biennial Regulatory Review -- Review of Accounts Settlement in the Maritime Mobile and Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications, IB Docket No. 98-96, FCC 98-123 (rel. July 17, 1998) (Notice).

Commission's rules² and which operate under the regulatory oversight of Commission staff, to perform these functions. This allows for a more efficient use of the Commission's staff for other, mission-critical functions. We also amend Section 3.10(e) of the Commission's rules,³ to make clear that certified accounting authorities must deal with the public in a non-discriminatory manner.

2. In addition, we adopt a Further Notice of Proposed Rulemaking, in which we seek comment on how best to implement this privatization. We propose that each customer be required to designate an accounting authority for each call. Further, in response to comments filed in this proceeding, we tentatively conclude that a transition period is needed to assure an orderly transfer of the Commission's accounting authority duties to private authorities. Accordingly, we propose a three year transition period. We seek comment on both the proposed length and manner of this transition.

II. BACKGROUND

3. International maritime mobile communications are HF or VHF radio communications between a ship and a coast station operated by the telecommunications operator in the country in which the station is located. International maritime mobile-satellite communications services provide similar communications services but are provided using a satellite providing international mobile satellite services. Payment for such communications usually involves the interaction of entities known as "accounting authorities." An accounting authority is the entity that settles accounts between the telecommunications operator and the customer. The telecommunications operator sends its bill either to the accounting authority that the customer has designated to act for it or to an "accounting authority of last resort" which settles accounts for customers that have not designated a particular accounting authority. The accounting authority presents the bill to the customer, collects the money from the customer and remits it to the telecommunications operator.

4. Historically, most countries have required individual ships to settle their own accounts with foreign operators and coast stations. Since 1934 in the United States, however, the Commission has acted as an accounting authority for the settlement of accounts for maritime, aircraft, and hand-held terminal radio services to both private users and other U.S. federal government agencies. Today, maritime mobile radio services account for about six per cent of the Commission's clearinghouse function. The other ninety-four percent of the Commission's clearinghouse function are accounted for by satellite based services, including

² 47 C.F.R. §§ 3.01 *et seq.*

³ 47 C.F.R. § 3.10(e). *See infra* Section I C.

aeronautical and hand-held terminals. In accordance with international procedures,⁴ the Commission has also certified 14 other, non-governmental accounting authorities to provide similar accounts-settlement services for U.S. users.⁵ Although these private accounting authorities were originally created under informal procedures without comprehensive rules to govern their conduct,⁶ the Commission later developed formal rules to govern their certification and operation.⁷ These rules ensured that only qualified applicants would be authorized as accounting authorities and that such authorities, once approved, would have adequate guidance of the standard of conduct required of them by the Commission. In 1998 the Commission settled accounts totaling \$5,149,567.74.

5. We instituted this proceeding under Section 11 of the Communications Act of 1934,⁸ as amended, which requires the Commission to review biennially all regulations applicable to the operations and activities of providers of telecommunications services to determine whether any such regulations are no longer necessary as the result of meaningful economic competition among providers of such services. Section 11 further requires the

⁴ International Telecommunication Union, ITU-T Recommendation D.90, Division L, Fascicle II.1 (Geneva, 1992) (ITU-T Recommendation D.90). The settlement of international maritime telecommunications is addressed in several international conventions, regulations and recommendations. Generally, matters involving international communications are addressed at the International Telecommunication Union (ITU), a specialized subordinate body of the United Nations, of which the United States is a Member. Article 66, Resolutions 5086-89 of the ITU's Radio Regulations provide the following three alternative methods for collecting charges for maritime radio communications: (1) by the administration that has licensed the mobile terminal; (2) by a recognized private operating agency; or (3) by any other entity designated by the government of the country in which such entity operates. The Commission has used a combination of all three approaches. ITU-T Recommendation D.90 provides greater detail concerning the accounting of international maritime communications and deals with the creation of accounting authorities. See ITU-T Recommendation D.90, Article 1.1 (L-L4).

⁵ See *Accounting and Operating Procedures in the Maritime Mobile Service*, FCC 80-741, Mimeo No. 28600 (rel. Dec. 12, 1980) (*Accounting and Operating Procedures Order*). The Commission certifies U.S. accounting authorities under ITU-T Recommendation D.90, Annex A. ITU-T Recommendation D.90 provides that governments should certify no more than 25 accounting authorities. *Id.* at 1.4 (L7).

⁶ See *Accounting and Operating Procedures Order*, *supra* note 5.

⁷ 1996 *Report and Order*, 11 FCC Rcd at 4692. The Rules are now codified as 47 C.F.R., Part 3 -- Authorization of Accounting Authorities in Maritime and Maritime Mobile-Satellite Radio Services, §§ 3.1-3.76 (1997).

⁸ 47 U.S.C. § 161(a).

Commission to modify or repeal any regulation no longer necessary in the public interest.⁹ In initiating this proceeding we tentatively concluded, among other things, that the Commission's continued function as an accounting authority is no longer necessary and, therefore, proposed to withdraw as a clearinghouse for the settlement of accounts in the maritime mobile radio, maritime mobile-satellite and other satellite-based communications services.

6. Five parties filed comments in response to the *Notice*.¹⁰ None supported our proposal to withdraw immediately as an accounting authority, but neither did they challenge our legal authority to do so. The majority of the parties argued that we need to develop a transition plan to assure the orderly transfer of the account-settlements process to private authorities. As detailed below, we find some merit to their arguments and modify our proposals accordingly.

III. REPORT AND ORDER

A. Withdrawal by the Commission from the Accounting Authority Function

7. In our *Notice* we proposed to withdraw from performing the functions of an accounting authority, leaving the settlement of accounts to the private authorities. We noted that the Commission had certified seven private entities as U.S.-based accounting authorities¹¹

⁹ 47 U.S.C. § 161(b).

¹⁰ Comments were filed by Comsat Corporation (Comsat), the National Marine Electronics Association (NMEA), the National Telecommunications and Information Administration (NTIA), the United States Coast Guard (Coast Guard) and 7 Cs Ltd (7 Cs).

¹¹ The seven U.S.-certified private accounting authorities cited in the *Notice*, and their accounting authority identification codes (AAICs), are as follows: Mackay Communications Inc. (US02); Radio-Holland Communications, Inc. (US03); Seven Seas Communications, Inc. (US04); KFS World Communications (d/b/a Globe Wireless) (US06); 7 Cs Ltd (US07); Mobile Marine Radio, Inc. (US08); EXXON Communications Company (US10); and Raytheon Service Company (US12). Since the *Notice* was issued, the Commission has certified two additional U.S. private authorities: Omnet, Inc. (US05) and Stratos Mobile Networks (US09). The United States has five vacant AAICs, US11 and US13,14 and 15. Additionally, Global Communications Corporation (US 14) is still listed as a U.S. accounting authority but did not submit the application for permanent certification required by the Commission in its 1996 rulemaking on permanent certification of accounting authorities. See *The Establishment of Commission Rules Concerning the Administration of U.S.-Certified Accounting Authorities in the Maritime Mobile and Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications*, 11 FCC Rcd 4692, 4696 (1996) (1996 Report and Order). Under the terms of the 1996 Report and Order the interim certification of an authority that did not submit the required application was automatically canceled 60 days after the effective date of that order.

and four foreign entities¹²

to settle accounts for U.S.-originated maritime and satellite radio traffic. We tentatively concluded that the existence of multiple private accounting authorities, coupled with the Commission's rules governing their conduct and our continuing regulatory oversight, should ensure that the U.S. public interest would continue to be served in the settlement of maritime and satellite accounts. We also concluded that privatization would promote competition in all communications markets, including the settlement of maritime radio accounts.

8. Most of the commenters use the Commission's accounts-settlement service and do not support our proposal to withdraw as an accounting authority. The commenters agreed, however, that, if we do withdraw, we should develop a plan to ensure an orderly transition to reliance solely upon private accounting authorities. We conclude that the Commission should withdraw from performing the functions of an accounting authority for all services for which we now provide accounts-settlements services, including HF and VHF maritime mobile services and all satellite-based services such as those offered by INMARSAT. The original caption in this proceeding was misleading because it stated that we would withdraw as an accounting authority for the provision of all services "except for distress and safety communications." In the *Notice*, however, we clearly stated that "[o]ur proposal to withdraw from the clearinghouse functions includes all services for which the FCC now provides clearinghouse service,"¹³ including distress and safety communications.

9. As a legal matter, we find no U.S. law or international agreement that requires the Commission to act as an accounting authority. The Communications Act is silent on the issue of accounting authorities. Section 8(g) of the Act¹⁴ provides only that, to the extent the Commission acts as an accounting authority, it must charge a fee for its services. It does not, however, require the Commission to become an authority. Section 8(d)(1) of the Act,¹⁵ which specifies that we should not charge the required fee to U.S. federal government agencies, does

¹² The Commission has issued formal certifications for four foreign entities, which are licensed as accounting authorities in their home countries, to settle accounts for U.S. customers. These entities are Kelvin Hughes (GB05); Peninsular Electronics Ltd. (GB06); The Marconi International Marine Co., Ltd. (GB08), all of which are licensed as accounting authorities by the United Kingdom, and Morsviazsputnik (SU04), which is licensed by Russia. The applications of International Radio Traffic Services, Ltd. (Ireland); ANDgat, Ltd. (Gibraltar); and ABB NERA, Ltd. (UK) are still pending, but they continue to operate under their interim certifications..

¹³ *Notice* at para. 13.

¹⁴ 47 U.S.C. § 158(g).

¹⁵ 47 U.S.C. § 158(d)(1).

not require the Commission to act as an accounting authority for such governmental agencies. With regard to international procedures, the ITU documents relating to accounting for maritime radio services do not require Member governments to act as accounting authorities. Indeed, they do not even require Member governments to create accounting authorities. Rather, they allow governments to decide for themselves how the accounts of their licensees will be settled.¹⁶ We note that no commenter argued that we are required by law to perform the function.

10. Moreover, the function of an accounting authority is not an inherently governmental function, but can be performed equally well by privately owned entities, operating under appropriate rules and regulations and subject to Commission oversight. A private accounting authority and the Commission perform identical functions in receiving bills from foreign earth and coast stations, sending them to customers, collecting the charges due to overseas entities and remitting them to those entities. The fact that there are seven U.S. private accounting authorities in addition to the Commission demonstrates that a role for private accounting authorities exists. We also note that most other countries require their ship station licensees to settle directly with foreign coast station operators without any governmental involvement. We find that removing the Commission as an accounting authority will create competition for the settlement of maritime and satellite accounts, providing the public with more choices in obtaining settlement of their accounts.

11. We agree with commenters that the Commission is currently a significant player in the market for U.S. accounting authority services.¹⁷ However, the fact that the Commission may play a "significant" role in the U.S. mobile communications marketplace is not due to the inability of private accounting authorities to provide these services but rather to historical factors. First, before the enactment of Section 8(g) of the Communications Act, the Commission did not charge a fee for settling maritime accounts.¹⁸ In contrast, private

¹⁶ As discussed below, INMARSAT and the International Maritime Organization (IMO) require that ship terminals intending to carry distress and safety communications must have a designated accounting authority. See paras. 27-8, *infra*. The regulations, however, do not require that the accounting authority be operated by a governmental entity.

¹⁷ See, e.g., Comsat Comments at 2 (stating that three-quarters of U.S. non-governmental agency customers that have INMARSAT satellite terminals use the Commission to settle their accounts and that the Commission is also the accounting authority for all U.S. governmental agency customers). Comsat, for example, notes that the Commission settles 100 percent of maritime and satellite traffic for U.S. governmental agencies and three quarters of the traffic for U.S. non-governmental customers. U.S. governmental agencies account for approximately 25 percent of all the traffic the Commission settles. Comsat Comments at 3-4

¹⁸ Under Section 8(d)(1) of the Communications Act, 47 C.F.R. 158(d)(1), the Commission does not charge the administration fee to other U.S. governmental agencies for settling their accounts.

entities have generally charged a fee. At that time, many ship licensees chose to use the Commission as their accounting authority, which was free, rather than pay a fee to a private accounting authority. Therefore, simple continued reliance on past practice may be responsible, in part, for the continued significant role of the Commission. Second, even after the Commission began charging a fee in 1992, the fee of \$2.00 per line item (*i.e.*, per call or message) was not based on a cost study.¹⁹ Third, there is no requirement that users specify an accounting authority and, when they have failed to do so, the Commission becomes the accounting authority by default.

12. Whatever the reason for the fact that the Commission is the accounting authority for many users, we agree with the commenters that the immediate departure of the Commission as an accounting authority would require a large number of U.S. international ship and satellite licensees to select an alternative accounting authority. A temporary disruption in the market, however, does not argue against the eventual withdrawal of the Commission as an accounting authority; it only argues that the Commission must educate users and give private accounting authorities time to adjust to the new situation. Accordingly, as we discuss below in the Further Notice of Proposed Rulemaking, we propose to delay implementation of our decision for three years to allow us to develop and implement a transition plan.

B. Governmental Agencies

13. In our *Notice* we recognized that the Commission now acts as the clearinghouse for the maritime and satellite communications of all U.S. governmental agencies.²⁰ We recognized that governmental users might have special needs that differ from other users and requested the agencies to address this issue in their comments. Governmental agencies commenting in response to the *Notice* express concerns about our withdrawal as an accounting authority on distress and safety communications, the U.S. taxpayer, and their own budgetary resources.

14. After reviewing the comments, we find no public policy reason for the Commission to continue to serve as an accounting authority for U.S. governmental agencies.

¹⁹ Because of the absence of a cost study, we do not know how the current FCC fee would compare to a market-based rate. In addition, no commenters discussed the rates charged by the other, non-governmental accounting authorities.

²⁰ Federal agencies rely upon the Commission for accounting authority services for use of INMARSAT ship, aircraft and land earth-stations for the Global Maritime Distress and Safety System (GMDSS) as well as for their command and control communications. These communications are critical, mission-related communications services.

Any potential problems with our withdrawal as an accounting authority for governmental agencies can be addressed through the adoption of a transition period, as discussed below.

15. As an initial matter, we find that the Communications Act does not require the Commission to act as an accounting authority for governmental users. Section 8(d)(1) of the Communications Act, which exempts governmental agencies from administrative fees for accounts settled by the Commission, does not require that the Commission settle the accounts.

16. We also find that although the Commission's withdrawal as an accounting authority likely would require that governmental agencies pay the costs for settling their accounts, there should not be any significant additional burden on U.S. taxpayers or an increased cost for the U.S. government.²¹ In 1998, the Commission settled accounts for U.S. governmental users of approximately \$1,827,299. The joint agency comments did not address the issue of costs, other than to assert that Commission withdrawal from settling their accounts would increase the agencies' costs. They did not file any specific, quantitative cost data. There are 14 competing non-governmental accounting authorities. We have not received any complaints or allegations that the market for these services is discriminatory in its rates. Although the agencies will probably have to begin to pay an accounting authority to settle their accounts, unless they decide themselves to become accounting authorities, the Commission now assigns four employees to settling accounts who can be reassigned to perform the agency's core functions. Any increased costs for other government agencies would be offset to some degree by a reduction in the Commission's costs (*i.e.*, time spent by the Commission to perform this function) of providing this "free" service to governmental agencies.

17. Finally, we do not agree with Comsat that it may be infeasible for governmental agencies to rely upon private authorities to accomplish the tasks now performed by the Commission. Comsat notes that many of the agencies rely upon satellite-based communications for classified, secure and/or confidential communications, and argues that forcing the agencies to rely upon private accounting authorities could require them to disclose sensitive call data to personnel outside the government, which could jeopardize mission security.²² We note that no government agency raises these potential national security issues. Currently, most government agencies, including the defense agencies, rely upon privately owned common carriers to carry their communications traffic. Even the maritime and satellite communications at issue in this proceeding are provided by privately-owned carriers.

²¹ See NTIA Comments at 2 (arguing that a change to private accounting authorities could result in increased costs to U.S. taxpayers).

²² Comsat Comments at 4-5.

The agencies have never claimed that the information they provide the Commission for us to settle their radio accounts is classified. In the absence of arguments from the agencies themselves about security problems, we have no basis for concluding that security cannot be maintained in a market composed of privately-owned accounting authorities.

18. We do, however, agree with the commenters that an immediate withdrawal of the Commission as the accounting authority for governmental agencies could result in a temporary disruption or curtailment of services to government users.²³ As discussed more fully below, we do not intend to withdraw immediately as an accounting authority but rather to institute a transition period. We believe that the concerns raised by the governmental agencies can be adequately met by that proposed transition period. This transition period will give governmental agencies time to make any necessary budgetary adjustments and to select a new accounting authority.

C. Amendment of Section 3.10(e)

19. In our *Notice* we proposed to revise the language of Section 3.10(e) to read as follows:

Section 3.10(e) Applicants must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer, and charge reasonable and non-discriminatory fees for service.²⁴

We stated that the existing phrasing of Section 3.10(e), that applicants must be "willing to offer their services to the public at a reasonable charge" already requires accounting authorities to serve the public on a reasonable and non-discriminatory basis. We explained that the existing language is intended to require that accounting authorities provide their service to anyone making a reasonable request for service, without undue or unjust discrimination, and to impose charges that are reasonable and non-discriminatory. We concluded, however, that it might be desirable to amend Section 3.10(e) to make the authorities' obligations not to discriminate explicit. We further stated, however, that we believed the revised language is not a substantive change but rather a clarification of the accounting authorities' existing obligations.

20. We adopt our proposal to amend Section 3.10(e). No party opposed this

²³ See e.g., NTIA Comments at 2; Coast Guard Comments at 1-2.

²⁴ *Notice* at para. 8.

proposal. 7 Cs, however, argued that our proposed amendment to Section 3.10(e) represents a substantive change to the obligation the Commission intended to impose upon accounting authorities in adopting the original language.²⁵ We do not agree that our proposal represents a substantive change. Even if the proposed amendment to the language of Section 3.10(e) were a substantive change, however, we can make substantive changes to the obligations of entities under our jurisdiction through rulemakings such as this one. Our July *Notice* made it clear that we would require accounting authorities to deal with the public on a non-discriminatory basis. We also note that 7 Cs asserts that adding the concept of non-discrimination to the concept of reasonableness already in the rule would be a good change, "if properly done." 7 Cs, however, does not elaborate as to what it means by "properly done." 7 Cs does argue that accounting authorities should be allowed to charge large-volume customers lower rates per unit, if the cost of serving such customers can be shown to be lower. We agree with 7 Cs and note that the Commission has found term and volume discounts not to be *per se* discriminatory and that they can have a beneficial effect on competition in the United States.²⁶

21. Comsat argues that our "overly stringent rules" will discourage many private companies from becoming accounting authorities because of their "fear of being overwhelmed by the sheer number of potential customers and services."²⁷ Moreover, Comsat argues, many companies have a relatively narrow customer base or have a narrow expertise in certain types of mobile communications and may not have the expertise, or desire, to address a broader class of customers.²⁸

22. We are not persuaded that the requirement in Section 3.10(e) to serve the public generally has limited the choice of U.S. users in selecting an accounting authority or

²⁵ See 7 Cs Comments at 1.

²⁶ See, e.g., *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7457 (*Special Access Expanded Interconnection Order*). In its access charge rules, for example, the Commission has allowed carriers to offer term and volume discounts for various rate elements. See, e.g., 47 C.F.R. § 69.110 (f)-(h) (entrance facilities); 47 C.F.R. § 111(i)-(k) (tandem switched transport); 47 C.F.R. § 69.112(e)-(h) (direct-trunked transport). See also *Special Access Expanded Interconnection Order*, 7 FCC Rcd at 7458-65. The Commission has allowed term and volume discounts for those elements where sufficiently competitive conditions exist such that unreasonable and unlawful discrimination will not likely result. See *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21435.

²⁷ Comsat Comments at 5.

²⁸ *Id.*

that it is likely to do so in the future. As we stated in our *Notice*, we believe that the requirement to serve the public on a non-discriminatory basis is already contained in the language of Section 3.10(e) we adopted in 1996. All of the previously certified accounting authorities, except two,²⁹ filed applications under the new rules in which they agreed to provide service to the public at large. Additionally, the foreign-certified accounting authorities who have applied to the Commission for authority to settle accounts for U.S. customers have similarly agreed to serve the public as required by the rules. Also, since we adopted our new rules in 1996, the Commission has granted certification to three additional U.S.-based accounting authorities and has certified one additional foreign certified entity all of whom have agreed to serve the public generally. No applicant has sought to serve a narrow user base or to handle only a narrow range of services and none of the currently certified authorities has sought to narrow the scope of their service. Under these circumstances, we are not persuaded that the current requirement to serve the public generally has limited the choice of U.S. users in selecting an accounting authority or that it is likely to do so in the future. Our proposal to amend the language of Section 3.10(e) did not propose to reopen the question of requiring accounting authorities to serve the public on a non-discriminatory basis, and Comsat's comments do not contain enough of a showing to reopen this issue at this time. Accordingly, we adopt our proposal to amend Section 3.10(e), but clarify that we are simply requiring that any fees charged for such services shall be reasonable and non-discriminatory; we are not mandating that the companies charge fees.³⁰

D. "Grandfathered" Accounting Authorities

23. In our *Notice* we noted that one entity, EXXON, was exempt from the requirement in Section 3.10(e) of our rules that private accounting authorities certified under our rules must deal with the public on a non-discriminatory basis. EXXON had noted that it had become an accounting authority only to settle accounts for its own fleet of ships and did not wish to enter the business of settling accounts for others. It, therefore, had requested permission to continue to serve only its own ships. Because EXXON had become an authority before there was a requirement to serve the public generally, the Commission concluded that it would be an undue hardship to require it to change its business. Further, because there were 17 other accounting authorities available to the public, it did not appear likely that granting EXXON's request would harm the public. The Commission, therefore, allowed EXXON to continue to settle accounts only for its own ships. In the *Notice* in this

²⁹ These are EXXON and Global Communications Corporation. EXXON sought and obtained "grandfathered" status to settle accounts only for its own ships. Global did not file an application for permanent certification, and its interim authorization was terminated by its failure to file.

³⁰ See Appendix A for revised language.

proceeding, we proposed to maintain the "grandfathered status" of EXXON and continue to exempt it from the requirement to deal with the public at large. We also proposed, however, to retain a condition that the Commission had imposed at the time it grandfathered EXXON that, should we ever designate the maximum number of accounting authorities provided for in ITU-T Recommendation D.90 – 25 – we might require a grandfathered entity to serve the public indiscriminately or to surrender its accounting authority for reassignment to one who will do so.³¹ No one opposed, and one commenter supported,³² our proposal to continue the exemption for EXXON. Because we continue to see no harm to the public from allowing EXXON to restrict its activities to its own ships, we shall continue EXXON's grandfathered status. We also have concluded to retain the condition that, should the need arise, we might require EXXON to serve the public on a non-discriminatory basis or to surrender its AAIC for reassignment.

E. Application Procedures

24. In our *Notice* we proposed to give applicants the opportunity to amend their pending applications to show how they propose to fulfill the non-discrimination obligation and to allow members of the public to address these entities' ability to perform that function. Specifically, we proposed to require all applicants with pending accounting-authority applications to amend their Form 44 submissions specifically to affirm that they will serve all customers requesting their services on a non-discriminatory basis. We received no opposition to this proposal. Because there is only one application pending, however, we believe it is not necessary to require the applicant to modify its application. If we grant the application, we will do so after we have issued this *Report and Order and Further Notice of Proposed Rulemaking*. The grant of that application will, therefore, be subject to the language of the amended rule, without any need for the applicant to amend its application. Similarly, with respect to future applications, all such applications will be filed under the modified Section 3.10(e) that makes it clear that an accounting authority designated by this Commission must serve all customers on a non-discriminatory basis.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

³¹ ITU-T Recommendation D.90, Section 1.4 (L7) provides that the number of accounting authorities "shall be limited as far as possible and should not exceed 25." Because Recommendations are not legally binding, it would be possible for the United States to name more than 25 accounting authorities if that became necessary. The binding Radio Regulation under which ITU-T Recommendation D.90 was promulgated provides only that the number of authorities "shall be limited as far as possible . . .," without specifying a particular number. ITU Radio Regulation, Art. 66, Section 4 (5091).

³² See NMEA Comments at 1.

A. Accounting Authority of Last Resort

25. In our *Notice* we noted that the Commission has historically acted as the "accounting authority of last resort" for the United States. In other words, foreign telecommunications operators have sent to the Commission all accounts where the customer has not designated a specific accounting authority. Should the Commission withdraw as an accounting authority, we noted that it would be necessary to provide for some entity to take over the Commission's function or to make some other alternative arrangement. We sought comment on several proposed alternatives, including: (1) appointing one of the private accounting authorities as the new authority of last resort; (2) requiring all customers to pre-subscribe to an accounting authority or to designate an accounting authority on every message; and (3) developing a formula to spread undesignated messages among several private accounting authorities. We also requested commenting parties to propose other solutions.

26. For reasons discussed below, we tentatively conclude that we should not designate a new accounting authority of last resort. Rather, we believe that customers should designate an accounting authority for each call or should presubscribe for the services of an accounting authority. Currently, because the Commission has historically acted as the accounting authority of last resort for the United States, it has not been necessary for customers affirmatively to select an accounting authority. As a result, many customers rely upon the Commission by default. In these circumstances, we agree with the parties that withdrawal of the Commission as an accounting authority could leave a high percentage of total U.S. maritime and satellite radio traffic for which no accounting authority is designated. Thus, we propose an alternative arrangement that requires each customer to designate an accounting authority for each call.³³

27. We also agree with commenters that an accounting authority designation is necessary for distress and safety telecommunications on board ships, particularly when a maritime mobile satellite system is being used, and that the Commission's withdrawal could have a deleterious effect on safety communications unless the Commission takes care to

³³ NMEA argues that we should not appoint an accounting authority of last resort who is in direct competition with the manufacturers and sellers of maritime satellite electronics equipment that are members of NMEA. NMEA Comments at 2. NMEA further states that some of the current, private accounting authorities are in such direct competition. NMEA does not state why such entities cannot serve as the accounting authority of last resort on a fair and equitable basis. Because we have decided to propose that customers should designate an accounting authority for each call, and therefore have decided not to designate a specific accounting authority of last resort, we need not decide whether NMEA's argument has merit.

ensure a seamless transition to new accounting authorities.³⁴ Currently, INMARSAT is the only worldwide maritime mobile satellite system providing these safety communications. INMARSAT will not commission a ship terminal intended to carry distress and safety communications unless the application designates an accounting authority.³⁵ Although maritime distress and certain safety communications are provided at no charge, other types of safety communications do incur a charge and an accounting authority needs to be designated to ensure those communications can be made anywhere in the world.

28. The Coast Guard stated that the International Maritime Organization's (IMO) Communications and Search and Rescue Subcommittee recently reaffirmed the need for an accounting authority in Global Maritime Distress and Safety System mobile satellite communications. After consultation with the IMO, INMARSAT established a procedure to bar operation of any commissioned earth station if payment has not been made for services. Although a ship that has been "barred" can still initiate a ship-to-shore distress alert, the Coast Guard cannot send any other communications, even if those communications are safety related.³⁶ If neither the designated nor a competent default accounting authority exists, then foreign earth stations will have no way to bill the U.S. satellite user. As a result, the user may, through no fault of its own, find that its ship earth station has been barred for non-payment of bills. Another problem, argues the Coast Guard, may be that although INMARSAT has agreed to give ship owners 14-days' notice before barring them, that may not be sufficient time for a mariner at sea to learn of a problem with its billings or to make arrangement for payment. A ship on the high seas that has been barred may be a danger to itself and others, as well as a potential problem for the Coast Guard.³⁷

29. The Coast Guard does not assert that the Commission must remain as the authority of last resort. Rather, the Coast Guard asserts, and we agree, that we must ensure that our withdrawal does not cause ship stations to become barred because they were not

³⁴ Coast Guard Comments at 1.

³⁵ Coast Guard Comments at 1.

³⁶ For example, a barred ship cannot send communications related to medical problems, pre-distress situations, navigational information or search and rescue situations. Coast Guard Comments at 2.

³⁷ Coast Guard Comments at 2. The Coast Guard further noted that the size of the potential problem can be seen from the fact that approximately 3,375 of the 4,500 U.S. INMARSAT earth stations commissioned to non-governmental users have the Commission designated as their accounting authority. The Coast Guard also notes that boaters having VHF and HF radios communicating with foreign coast stations need an accounting authority. The Coast Guard believes that alternative payment arrangements, such as use of a credit card, are not feasible because marine VHF and HF communications can be heard by anyone. *Id.*

informed that they need to choose a new accounting authority. As discussed below, during the transition period we plan to notify users of our decision to withdraw as an accounting authority and of their need to select a new accounting authority.³⁸

30. None of the current accounting authorities indicated that they would be interested in becoming the new authority of last resort. The only party to address the issue at all was 7 Cs, which argued that a formula would be burdensome for the accounting authorities to administer and for the Commission to oversee. 7 Cs argued that we should instead distribute messages without an accounting authority designation on a random basis, e.g., designating each accounting authority in turn to receive the traffic for a month.

31. We agree that a formula would be cumbersome, but we believe that a monthly rotation would be equally burdensome, either to someone in the United States who would direct the traffic to the appropriate authority for the current month or for foreign telecommunications operators, who would be required to send the accounts to a different authority each month.

32. Another way we could approach the issue would be to require users to enter into arrangements with an accounting authority in much the same way that consumers now presubscribe for service from long-distance telephone carriers. Although such a system would put the burden on the user to decide who will settle its accounts, it would appear to be the most straightforward system to administer in practice.³⁹ We ask interested persons to comment on this proposal. We recognize, however, that the fact that the Commission has served as the accounting authority of last resort has made it unnecessary for users to know or select a private accounting authority. Preparing them for the need to select an authority would be one of the purposes of the proposed transition period.

B. Transition Period

33. We tentatively conclude that we should order a transition period of three years from the date of publication in the Federal Register of a final Report and Order in this proceeding. Because of the Commission's significant presence and because many users may not be aware that private accounting authorities are an alternative, an immediate withdrawal

³⁸ See para. 39, *infra*.

³⁹ NMEA argues, though, that presubscription "would be cumbersome and prone to a breakdown somewhere in the process." NMEA comments at 2. NMEA does not state why it believes this to be so. For our part, we see no reason why presubscription would not be workable. However, we ask interested persons to comment on this issue.

from settling accounts by the Commission may result in some turmoil.⁴⁰ For example, it is likely that many maritime satellite users will not receive timely notice that the Commission has withdrawn as an accounting authority. This situation may result in users having a substantial number of unpaid bills. Because it is the practice of international mobile telecommunications operators to "bar" (*i.e.*, suspend) service for users who have unpaid bills, an immediate withdrawal by the Commission could result in significant numbers of users finding themselves without service.⁴¹ In addition, we agree with commenters that private accounting authorities will need time to handle the increased number of accounts.⁴² We therefore agree with the parties that the public interest would not be served by an immediate Commission withdrawal as an accounting authority. A transition is needed to notify and prepare users for the need to deal with a new accounting authority, provide the existing private accounting authorities time to prepare to handle the increased load of settlements they will receive as result of Commission withdrawal, and provide government agencies time to obtain the necessary budgets and establish alternative billing and payment arrangements to ensure that uninterrupted service can be established.

34. On the basis of NTIA's comment that most federal agencies will require at least three years to identify the funds required, obtain funding, and compete and award contracts to successful bidders,⁴³ we tentatively adopt a three year transition period. We seek comment on this proposal.

35. During this period, we will notify such users of our decision to withdraw as an accounting authority and their need to select a new authority. We shall also issue public notices with information about the transition. Because most of the communications for which accounting authorities must settle accounts now goes over INMARSAT satellite terminals, it should be relatively easy to implement the transition. The users of such terminals should be easy to identify and to notify of the need to select an alternative accounting authority. Users of maritime HF and VHF radio services might be slightly more difficult to reach. Many of such users are, according to the parties, operators of small ships and boats who send relatively

⁴⁰ See *e.g.*, Comsat Comments at 2-4; NTIA Comments at 2; Coast Guard Comments at 2.

⁴¹ Comsat Comments at 3.

⁴² See Comsat Comments at 3 (arguing that the Commission has not shown that the existing private authorities, who now collectively handle only one-quarter of all U.S.-licensed INMARSAT terminals, have sufficient resources to handle an increase in the number of accounts of up to 400 percent).

⁴³ NTIA Comments at 2.

few messages or spend much of their time at sea.⁴⁴ We believe that it would be useful to identify trade associations or other organizations that represent such small users and to enlist their aid in trying to reach their members with information on choosing a new accounting authority.⁴⁵

36. We ask interested persons to comment on our proposed transition periods and to suggest any problem areas they see that we should address during this period. The Coast Guard, for example, asserts that the economic impact of our withdrawal as an accounting authority could be great unless we establish a process to ensure that it is not.⁴⁶ The Coast Guard is concerned about the impact that could come if the fees charged by private accounting authorities differ significantly from the \$2.00 per message the Commission charges. We cannot guarantee that private vendors will charge the same fee the Commission charges. It is possible that users who rely upon the Commission to settle their accounts will pay higher fees. We believe, however, that the competition among private accounting authorities for the customers now served by the Commission should act to keep fees reasonable. We agree with the Coast Guard, however, that we need to attempt to contact current users and let them know of the need for them to make alternative arrangements. We also plan to send a copy of these proposals to the current private accounting authorities and governmental users. We specifically seek comment from NTIA and the Coast Guard on how to ensure that their concerns are addressed during this period. Additionally, U.S. government agencies currently using the Commission to settle their accounts are encouraged to provide estimates of the costs of converting to the use of private accounting authorities. We recognize that there may be certain efficiencies in having one entity settle these government accounts. U.S. government users are encouraged to provide information regarding the costs associated with decentralizing the settlements process for government users.

V. PROCEDURAL MATTERS

37. **Ex Parte.** This *Further Notice of Proposed Rulemaking* is permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206. Persons making oral *ex parte* presentations are reminded that memorandums summarizing the presentations

⁴⁴ *See e.g.*, Coast Guard Comments at 2.

⁴⁵ We note that licensees who are required by Section 80.1067 of our rules to have GMDSS equipment on board must be inspected and certified annually as to their compliance with our rule. *See* 47 C.F.R. § 80.1067. We could notify such licensees of the need to select a new accounting authority during the annual inspection.

⁴⁶ Coast Guard Comments at 3.

must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

38. **Regulatory Flexibility Act.** As required by the Regulatory Flexibility Act,⁴⁷ we prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals contained in the July 1999 *Notice* in this proceeding. We received no comments on the IRFA. After reviewing comments on the proposals in the *Notice*, we have prepared a Final Regulatory Flexibility Analysis (FRFA) on the rules adopted by the *Report and Order* portion of this document. The FRFA is contained in Appendix B.

39. Also in accordance with the Regulatory Flexibility Act, we are required to prepare an IRFA for the proposals contained in the *Further Notice of Proposed Rulemaking* portion of this document, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."⁴⁸ The purpose of this *Further Notice of Proposed Rulemaking* is to seek comment on how best to implement the proposals adopted in the *Report and Order* portion of this document. The proposals in the *Further Notice of Proposed Rulemaking* do not impose any additional compliance burden on small entities dealing with the Commission. Rather, the *Further Notice of Proposed Rulemaking* seeks comment on a proposed transition period and any problem areas that should be addressed during this transition period. The transition period is intended to ensure that the Commission's withdrawal as an accounting authority shall be as smooth as possible. We anticipate that the proposals will reduce any regulatory and procedural burdens on small entities. Accordingly, we certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the rules proposed in this *Further Notice of Proposed Rulemaking* will not, if promulgated, have a significant economic impact upon a substantial number of small business entities, as that term is defined by the Regulatory Flexibility Act. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administrations in accordance with the Regulatory Flexibility Act. We shall also publish a copy of this certification in the Federal Register. We shall analyze the information submitted during the comment period and, if we determine at the time that we issue a final rule that such final rule changes will have a significant

⁴⁷ 5 U.S.C. § 603.

⁴⁸ *Id* at § 605(b).

economic impact on a significant number of small business entities, we shall prepare a Final Regulatory Flexibility Analysis.

40. **Copies to Private Accounting Authorities and Governmental Users.** The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the current U.S.-certified private accounting authorities (Mackay Communications Inc.; Radio-Holland Communications, Inc.; Seven Seas Communications, Inc.; KFS World Communications (d/b/a Globe Wireless); 7 Cs Ltd; Mobile Marine Radio, Inc.; EXXON Communications Company; Raytheon Service Company; and Global Communications Corporation) and to the current governmental users (U.S. Coast Guard, Department of Defense).⁴⁹

41. **Initial Paperwork Reduction Act of 1995 Analysis.** The *Further Notice of Proposed Rulemaking* portion of this document contains a proposed information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the proposed information collections contained in this *Further Notice of Proposed Rulemaking*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 60 days from the date of publication of this *Further Notice of Proposed Rulemaking* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

42. **Notice and Comment Provision.** Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415 (1997), interested persons may become parties to this proceeding by filing comments on the proposals contained in the *Further Notice of Proposed Rulemaking* portion of this document on or before August 23, 1999, and reply comments on or before September 8, 1999. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the Commission's reliance on such information is noted in the Report and Order in which it takes final action.

⁴⁹ A list of those agencies is attached as Appendix C.

43. Parties in this proceeding may file comments and replies on paper or electronically. Under Section 1.419 of the Commission's Rules, 47 C.F.R. § 1.419, parties filing comments on paper must file an original and four copies of all comments, reply comments, and supporting documents. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Persons who wish to participate informally may submit two copies of their comments, stating thereon the docket number of this proceeding. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554. Those filing written pleadings in person should file them at the counter TW-A325 located in the lobby of 445 12th Street, S.W. Additionally, parties must file a copy of their comments, replies and supporting documents with the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., N.W., Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center (Room CY-A257) at 445 12th St. S.W. For additional information about this proceeding, please contact John Copes at (202) 418-1478.

44. Pursuant to Section 1.49(f) of the Commission's Rules, 47 C.F.R. § 1.49(f),⁵⁰ Parties may file their comments, replies and supporting documents in electronic form via the Internet. Such parties should use the Commission's Electronic Comment Filing System, which they can access using the following Internet address:

<<http://www.fcc.gov/e-file/ecfs.html>>

Further information on the process of submitting comments electronically is available at <<http://www.fcc.gov/e-file/>>. Pursuant to Section 1.419(d) of the Commission's Rules, 47 C.F.R. § 1.419(d), Parties need file only one copy of an electronic submission. In completing the transmittal screen, a party filing a comment, reply or supporting document should include his or her full name, U.S. Postal Service mailing address and the lead Docket number for this proceeding, which is IB Docket No. 98-96. The Commission will consider electronically filed comments that conform to the guidelines of this section part of the record in this proceeding and accord them the same treatment as comments filed on paper.

45. Parties filing comments, replies and supporting documents on paper must also file their submissions on diskette. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format, using MS DOS and Word Perfect 5.1 for Windows or compatible software. The diskette should be submitted in "read only" mode. The diskette

⁵⁰ See Electronic Filing of Documents in Rulemaking Proceedings, Appendix B, pp. 21-2, FCC 98-56 (Report and Order released April 6, 1998)

should be clearly marked with the party's name, the proceeding to which it is addressed (in this case, IB Docket No. 98-96), the type of pleading (comment or reply) and the date of submission. The diskette should be accompanied by a cover letter setting forth the same information. Each diskette should contain only one party's pleading, preferably in a single electronic file. The party should submit one copy of the diskette to John Copes, International Bureau, Telecommunications Division, 445 - 12th St., S.W., Room 6-C847, Washington, D.C. 20554. The party should file an exact copy of the diskette, identically marked, with the Commission's copy contractor, International Transcription Service, Inc., at the address shown above in paragraph 43.

46. Persons wishing to comment on the proposed and/or modified information collections should file written comments on or before August 23, 1999. The Office of Management and Budget (OMB) must submit its written comments on the proposed and/or modified information collections, if any, on or before 60 days after the date of publication of the summary of this *Further Notice of Proposed Rulemaking* in the Federal Register. In addition to filing comments with the Secretary, they should also submit a copy of any comments on the information collections contained herein Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503.

VI. CONCLUSION

47. Based on the above analysis, we conclude that the Commission shall cease operating as an accounting authority for settling accounts for maritime mobile, maritime satellite, aircraft, and handheld terminal radio services. We further conclude that a transition period is necessary to allow for an orderly transition to a full privatization of the accounts-settlement function and seek comment on a number of proposals regarding how best to implement this transition. Finally, we amend Section 3.10(e) of our rules to make explicit that certified accounting authorities must deal with the public in a non-discriminatory manner.

VII. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 11, 201-205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 161, 201-205 and 303(r), that this *Report and Order* IS HEREBY ADOPTED.

49. IT IS FURTHER ORDERED pursuant to Sections 4(i), 4(j), 11, 201-205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 161,

201-205 and 303(r), that this *Further Notice of Proposed Rulemaking* IS HEREBY ADOPTED and comments ARE REQUESTED as described above.

50. IT IS FURTHER ORDERED that Section 3.10(e) of the Commission's rules is amended to read as shown in Appendix A.

51. IT IS FURTHER ORDERED that the Office of Public Affairs, Reference Operations Division, SHALL SEND a Copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Magalie Roman Salas *WRC*
Secretary

APPENDIX A**Changes to 47 C.F.R. Part 3 of the Commission's Rules**

Part 3 of the Commission's Rules and Regulations (Chapter 1 of Title 47 of the Code of Federal Regulations) is amended as follows:

1. The authority citation for Part 3 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 303(r).

**PART 3-AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES
IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES**

2. The Table of Contents for Part 3 is unchanged
3. Section 3.10 is amended by revising the first sentence of paragraph (e) to read as follows:

(e) Applicants must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer, and fees charged for providing such services shall be reasonable and non-discriminatory.

* * * * *

APPENDIX B**Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act (RFA),⁵¹ the Commission included an Initial Regulatory Flexibility Analysis (IRFA) in the *Notice of Proposed Rulemaking* (NPRM) in this proceeding.⁵² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁵³

A. Need for, and Objectives of, the Rule Adopted Here

2. This *Report and Order* portion of this *Report and Order and Further Notice of Proposed Rulemaking* adopts an amendment to Section 3.10 of the Commission's Rules and Regulations to clarify that the section obligates private accounting authorities certified by the Federal Communications Commission to deal with the public on a non-discriminatory basis. We do not believe that this amendment changes the substance of the rule that the Commission adopted in 1996, which implicitly required such non-discriminatory treatment, but believe that it is desirable to make private accounting authorities' obligations as clear as possible.

3. The *Report and Order* also adopts the proposal in the NPRM to continue the exemption for one entity that had previously been certified as a private accounting authority on an interim basis that allows it to provide account-settlement services only for its own vessels. This entity had obtained interim certification before the Commission imposed an obligation for private accounting authorities to provide service to all customers requesting it, and the Commission believes that it would work an undue hardship to require it to change the scope of its operations. We believe that the public has adequate opportunity to obtain service from other private accounting authorities the Commission has certified and that there is no reason at this time to require this entity to serve all comers.

⁵¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 603 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁵² See 1998 Biennial Review--Review of Accounts Settlement in the Maritime Mobile and Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications, 13 FCC Rcd 13651, 13665-6 (1998) (*Notice*).

⁵³ See 5 U.S.C. § 604.

4. Finally, this *Report and Order* adopts the proposal in the NPRM that the Commission will cease to act as an accounting authority, leaving the settlement of maritime and satellite accounts to the private accounting authorities the Commission has certified. We believe that withdrawal of the Commission as an accounting authority will strengthen the system of private accounting authorities the Commission has created over the years and allow such private authorities to become more competitive. We do not see a need for a governmental body to perform account-settlement functions, because these functions have been performed without difficulty by a variety of private authorities, operating under FCC rules for many years. The Commission has concluded that there is no reason for the FCC to continue to settle the accounts for other U.S. government agencies. We find that the agencies have not argued that they have any special needs with respect to the settlement of their radio accounts that cannot be met by private accounting authorities. The Commission did, however, note that the agencies have relied upon the Commission to settle their accounts and conclude that the immediate withdrawal of the Commission as an accounting authority could cause some temporary disruption or curtailment of service to government users. The Commission, therefore, concluded to delay its departure and to institute a transition period. The Commission believes that such transition period will give that agencies time to make all preparations, including any budgetary adjustments, for shift to a private accounting authority. The nature of the transition period will be addressed by the *Further Notice of Proposed Rulemaking*.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments submitted in response to the IRFA. Because the proposed amendment of Section 3.10 made no substantive change to the current obligation of private accounting authorities, the adoption of the proposed amendment will have no significant impact upon any small business entities. Similarly, the proposal to continue to exempt one entity from the obligation to provide service to all users on a non-discriminatory basis does not make a change from the present situation, adoption of the proposal will not have a significant impact upon a small business. The entity that was exempted is not itself a small business. Because there are many other private accounting authorities who are obligated to serve users on a non-discriminatory basis, allowing the one entity to provide services only to its own vessels will not adversely affect an small businesses that are customers of private accounting authorities. Finally, the decision for the FCC to withdraw as an accounting authority should not have any significant impact upon small business entities. Even without the FCC to settle accounts for users, there will be a sizeable number of private accounting authorities to take over FCC functions.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

6. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁵⁴

7. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million.⁵⁵ The Census report does not provide more precise data. The rules proposed in this Notice of Proposed Rulemaking, however, apply only to entities providing account-settlement services for maritime mobile and maritime mobile-satellite radio services. As noted, there are currently only 17 such entities. Small businesses may be able to become accounting clearinghouses, as the establishment of such a function does not appear to involve high implementation costs.

D. Description of Projected Recordkeeping and other Compliance Requirements

8. The rule amendment adopted in this *Report and Order* merely clarifies an existing requirement imposed on accounting authorities. It, therefore, does not alter the reporting, recordkeeping or other compliance requirements of certified accounting authorities in the maritime mobile, maritime mobile-satellite, aeronautical and other satellite-based radio services. The decision to continue the exemption of one currently certified accounting authority from the requirement to serve the public on a non-discriminatory basis affects only that entity. Further, because it continues the current exemption, it will not alter that entity's recordkeeping or compliance activities. The decision of the Commission to withdraw as an accounting authority will affect both those now certified as accounting authorities and those who may apply for certification in the future. The withdrawal of the Commission will result in the transfer of the accounts that the Commission now settles to the private accounting authorities. This should give each such accounting authority the opportunity to compete for increased business. The withdrawal of the Commission, however, should not increase the recordkeeping and compliance efforts of private accounting authorities.

⁵⁴ 13 C.F.R. § 120.121, SIC code 4899.

⁵⁵ 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

D. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. Because the rule amendment adopted in this Report and Order did not alter the obligations of any present or future certified private accounting authority, there was no need to take any steps to minimize the impact of the rule. Similarly, the decision of the Commission to continue the exemption for one entity from the obligation to serve the public on a non-discriminatory basis did not change that entity's current obligations, there was no need to take steps to minimize the impact of the exemption on small entities. The decision of the Commission to withdraw as an accounting authority will increase the potential business of currently certified accounting authorities. It also may make additional entities decide that they would like to seek certification as a private accounting authority. Commission withdrawal as an accounting authority will require those who currently rely upon the FCC to settle their maritime and satellite radio accounts will be required to select new accounting authority from among certified accounting authorities. It is conceivable that selection of such an accounting authority may be more difficult for some small entities than others. Because the Commission has delayed the effectiveness of its withdrawal as an accounting authority until the completion of a transition plan, small entities will not have to choose a new authority immediately. Small entities will be able to bring any special needs to the attention of the Commission during the preparation of the transition plan that will be undertaken pursuant to the *Further Notice of Proposed Rulemaking* portion of this proceeding.

Report to Congress: The Commission will send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order and Further Notice of Proposed Rulemaking*, including this FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order and Further Notice of Proposed Rulemaking* and FRFA (or summaries thereof) will be Published in the Federal Register. See 5 U.S.C. § 604(b).

Appendix C

Government Agencies Who Use Commission as an Accounting Authority

Department of Agriculture
Department of Air Force
Department of the Army
Coast Guard
Department of Commerce
Defense Information Systems Agency
Department of Energy
Federal Aviation Administration
Federal Emergency Management Agency
Department of Health and Human Services
Department of the Interior
Department of Justice
Department of the Navy
Department of Navy--Command
National Aeronautics and Space Administration
National Science Foundation
Office of Secretary of Defense
On-Site Inspection Agency
Department of State
Department of Treasury
United States Information Agency
U.S. Postal Service
Department of Veteran Affairs

Statement of Commissioner Harold W. Furchtgott-Roth

Re: 1998 *Biennial Regulatory Review* -- Review of Accounts Settlement in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services (IB Docket No. 98-96)

I support today's decision announcing the Commission's withdrawal as an accounting authority for settling accounts for maritime mobile and maritime-satellite radio services.

I write separately to note that this proceeding was initiated as part of the Commission's 1998 Biennial Review, which was conducted pursuant to Section 11(a) of the Communications Act, as amended, 47 U.S.C. § 161(a). However, as thoroughly described in my *Report on Implementation of Section 11 by the Federal Communications Commission* (Dec. 21, 1998), which can be found on the FCC WWW site at <http://www.fcc.gov/commissioners/furchtgott-roth/reports/sect11.html>, I believe that the 1998 Section 11(a) review was not as thorough as it should have been. I look forward to working with the chairman and other commissioners on the 2000 Biennial Review, planning for which should begin in mid-1999.

* * * * *